

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. BANK, N.A.,

MEMORANDUM AND ORDER

Plaintiff,

10-cv-3381 (KAM)(RML)

-against-

ANNITH BYRD, WAYNE BYRD, HARVESTIME
TABERNACLE, INC., CARMEN FAIRCLOUGH,
TRAVELENE NECKLES, JACQUELINE SIMPSON,
RUPERT WYNTER, MELVYN DUNKLEY, and
NORRIS WYNTER,

Defendants.

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MATSUMOTO, United States District Judge:

On February 22, 2012, the court granted summary judgment and awarded certain attorneys' fees and costs to plaintiff in the instant foreclosure action, but requested additional documentary support to enable the court to determine the amount due and outstanding under the relevant Note and Mortgage. Presently before the court are plaintiff's supplementary submissions, which provide an adequate basis to determine the amount due and outstanding under the Note and Mortgage. For the reasons that follow, the court grants a judgment of foreclosure in favor of plaintiff in the amount of \$1,734,806.28, along with interest at a rate of \$345.97 *per diem* from February 9, 2011, through the date of judgment.

On February 9, 2007, defendant Annith Byrd executed a promissory note (the "Note"), promising to pay Greenpoint Mortgage Funding Inc. ("Greenpoint") a principal sum of \$1,575,000. (ECF No. 53, Plaintiff's Statement of Undisputed Material Facts ¶¶ 1-2.) On the same date, defendants Annith and Wayne Byrd (the "Byrd defendants") executed and delivered to Greenpoint an assignment of rents, security agreement, and commercial mortgage (collectively, the "Mortgage") on the commercial property located at 501-509 East 78th Street in Brooklyn, New York, as security for the loan. (*Id.* ¶ 3.) Plaintiff U.S. Bank, N.A. ("plaintiff") is now the holder of the Note, Mortgage, and all the other related loan documents. (*Id.* ¶ 14.)

On April 11, 2011, plaintiff moved for summary judgment, seeking to foreclose on the Mortgage. (See ECF No. 51, Plaintiff's Motion for Summary Judgment.) On February 22, 2012, this court, which has subject-matter jurisdiction in this action pursuant to 28 U.S.C. § 1332, granted summary judgment to plaintiff against defendants Annith Byrd, Wayne Byrd, Harvestime Tabernacle, Inc., Carmen Fairclough, Travelene Neckles, Jacqueline Simpson, Rupert Wynter, Melvyn Dunkley, and Norris Wynter (collectively, "defendants"); (2) ordered the foreclosure and sale of the property located at 501-509 East 78th Street in

Brooklyn, New York¹; and (3) awarded plaintiff a total of \$19,858.00 in attorneys' fees and \$1,475.84 in costs up to and including plaintiff's motion for summary judgment. (See generally ECF No. 59, Order dated 2/22/2012.) In addition, the court directed plaintiff to submit, by February 29, 2012, supporting documentation and calculations to enable the court to assess the amount due and outstanding under the Note and Mortgage, and further ordered that any defendant who wished to respond should do so by March 7, 2012. (See *id.* at 22.)

On February 28, 2012, plaintiff timely submitted a sworn affidavit and supporting documentation to establish the amount due and outstanding under the Note and Mortgage. (See generally ECF No. 60, Declaration of Kenneth Beck ("Beck Decl.")) None of the defendants have responded or demonstrated any intent of responding to the Court's February 22, 2012 Memorandum and Order.

The court has reviewed plaintiff's additional submissions and finds that they provide an adequate basis from which the court can determine the amount due and outstanding under the Note and Mortgage. The court has also performed independent calculations to confirm the accuracy of plaintiff's claims, and finds that plaintiff has established its entitlement to:

¹ This court appointed a receiver for the Property on March 17, 2011. (See ECF No. 49, Order Appointing Receiver.)

- **\$1,532,921.14** in principal, as reflected in plaintiff's computerized loan history (see Beck Decl. ¶ 7, Ex. C);
- **\$119,360.26** in interest accruing between March 1, 2010, and February 9, 2011, on the unpaid principal balance at the rate of 8.125 percent *per annum*, per paragraph 3(b)(i) of the Note (see *id.* ¶ 8, Ex. D);
- **\$5,262.47** in late charges, per paragraph 7 of the Note (see *id.* ¶ 9, Ex. D);
- **\$15,329.21** in prepayment premiums, per paragraph 10(a)(iii) of the Note (see *id.* ¶ 11, Ex. D);
- **\$61,933.20** in advances for payment of real estate taxes and insurance charges, after deducting the amount remaining in defendants' tax escrow account (see *id.* ¶ 12, Exs. E & F); and
- Interest on the Note and Mortgage that continues to accrue at a rate of **\$345.97 *per diem*** from February 9, 2011, through the date of entry of judgment.

Accordingly, the court finds that the amount due and outstanding under the Note and Mortgage as of February 9, 2011, is \$1,734,806.28, and interest shall accrue at a rate of \$345.97 *per diem* from February 9, 2011, through the date of entry of judgment.

CONCLUSION

For the foregoing reasons, the court grants a judgment of foreclosure against all defendants in the amount of \$1,734,806.28, along with interest that accrues at a rate of \$345.97 *per diem* from February 9, 2011, through the date of judgment.

The court respectfully directs the Clerk to (a) enter judgment in favor of plaintiff against Annith and Wayne Byrd for (1) foreclosure and sale of the property located at 501-509 East 78th Street in Brooklyn, New York, in the amount of \$1,734,806.28; (2) interest accruing at a rate of \$345.97 *per diem* from February 9, 2011, through the date of judgment; (3) \$19,858.00 in attorneys' fees; and (4) \$1,475.84 in costs; (b) serve a copy of this Memorandum and Order on any party not represented on ECF and note service on the docket; and (c) close this case.

SO ORDERED.

Dated: Brooklyn, New York
March 30, 2012

/s/
KIYO A. MATSUMOTO
 United States District Judge
 Eastern District of New York